discussed in 18 MICH. L. REV. 709. See *Cunday* v. *Lindsay*, 3 App. Cas. 459; *Phillips* v. *Brooks* [1919], 2 K. B. 243; *Edmunds* v. *Transportation Co.*, 135 Mass. 283; *Rodliff* v. *Dallinger*, 141 Mass. 1; 35 LAW QUART. REV. 288. In arriving at its conclusion that there was no contract the court applies the principle laid down by Pothier in TRAITÉ DES OBLIGATIONS, s. 19. "Whenever the consideration of the person with whom I am willing to contract enters as an element into the contract which I am willing to make, error with regard to the person destroys my consent and consequently destroys the contract," etc. Essentially the same principle is laid down in FRY ON SPECIFIC PERFORMANCE, Sec. 229, and has been recognized and applied in many English cases. McCardie, J., however, confessed "that the question is one of difficulty," and therefore gave consideration to the other point involving the limits of the rule of *Lumley* v. *Gye*, 2 E. & B. 216, when sought to be applied to a case wherein the defendant was the agent of the party breaking the contract. The conclusion on this point would seem to be equally sound with that on the first.

COSTS—ALLOWANCE OF COSTS FOR BRIEF EXCESSIVE IN SIZE.—On affirmance of a judgment where the respondent filed a brief of forty-six printed pages, quoting extensively from the testimony found in the abstract, *held*, that respondent be allowed costs for brief not in excess of twenty pages, as this was, in the judgment of the court, sufficient in which to make a statement of facts and to discuss the legal questions involved. *Fossali* v. *Gardella* (Utah, 1920), 193 Pac. 641.

The courts have consistently held to the theory that costs are given as a reimbursement for necessary expenses and not as an instrumentality to make it perilous for a party to come into court, and for this reason the courts seek to keep the costs as small as possible. Where the transcript of a record is unnecessarily long the losing party should not be required to bear the burden. *Stephenson* v. *Chappell*, 12 Tex. Civ. App. 296. The losing party is not to be assessed with the costs of a brief that is unnecessarily prolix. *Cobb* v. *Hartenstein*, 47 Utah 174. In *Wilson* v. *Pontiac Railway Co.*, 57 Mich. 155, the bill of exceptions was too voluminous and the costs of the losing party were reduced. Just what makes a record or brief too prolix is largely a question to be determined upon the circumstances surrounding the particular case. The Michigan court rules provide that the record on appeal shall be reduced to narrative form rather than be reported by question and answer, and where the record is not made in narrative form, when such form is suitable, the costs will be reduced. *Ruttle* v. *Foss*, 161 Mich. 132. The Wisconsin court rules provide for an abstract of necessary parts of a record on appeal, and where unnecessary parts are included in the abstract the costs will be reduced. *Willey* v. *Lewis*, 113 Wis. 618. Testimony of witnesses on which no question was raised below is unnecessary matter. *Geo. W. Roby Lumber Co.* v. *Gray*, 73 Mich. 363. Printing a motion for a new trial when such motion is not reviewable is unnecessary matter for which no costs will be allowed. *Nederland Ins. Co.* v. *Hall*, 86 Fed. 741. Where the brief contained large reprints of the abstract, the costs were reduced. *Steele* v. *Crabtree*,

130 Iowa 313. If the appellant's abstract or record on appeal might by proper condensation be shortened, the court may reduce the costs. *Haughton* v. *Bilson,* 84 Kan. 880. There are two ways in which the courts restrict costs: they either refuse any costs on the defective record or make an arbitrary reduction for unnecessary matter. The cases uniformly hold that where the whole record or brief is unnecessary, or where it is so defective that it must be stricken from the files, or where an additional brief or record is required because of the prevailing party's own negligence, no costs whatever are allowed therefor. *In re Wetmore,* 6 Wash. 271; *Hankwitz* v. *Barrett,* 143 Wis. 639; *Huntley* v. *Chicago R. Co.,* 142 Iowa 697; *Treat* v. *Hiles,* 76 Wis. 367; *Mann* v. *Hefter,* 128 N. Y. Supp. 663; *Finlen* v. *Heinze,* 28 Mont. 548; *Dufur* v. *Paulson,* 110 Wis. 281; *Bonato* v. *Peabody Coal Co.,* 143 Ill. App. 163. The courts also uniformly hold that where a necessary brief or record contains unnecessary matter and the court allows it to remain on the files, deduction will be made only to cover the costs on that part which is unnecessary. *Cobb* v. *Hartenstein, supra; Wilson* v. *Pontiac Railway Co., supra; Lever* v. *Thielke,* 115 Wis. 389; *Spang* v. *Robinson,* 24 W. Va. 327. See 5 STAND. CYC. OF PROC. 1004.

DEATH—CIVIL ACTION—INTERPRETATION OF "CHILD."—A statute gave a right of action in case of death by wrongful act to the child or children of the deceased. Plaintiff's father and mother were married in accordance with the tribal ceremonies of the Tunica Indians, of which tribe they were members, but the law of Louisiana does not recognize such marriage. Plaintiff's mother having been killed, through the alleged negligence of the defendant, he brought action under the statute. *Held,* no cause of action, for the word "child" in the statute means legitimate child. *Youchican* v. *Texas & P. Ry. Co.* (La., 1920), 86 South. 551.

Authority for the above view is found in *Lynch* v. *Knoop,* 118 La. 611; *McDonald* v. *Southern Ry. Co.,* 71 S. C. 352; *Good* v. *Towns,* 56 Vt. 410; *Harkins* v. *Philadelphia & Reading Ry. Co.,* 15 Phil. 286; *Dickinson* v. *Ry. Co.,* 2 H. & L. (Exch.) 735. In most of these cases the position of parent and child is reversed, but the same interpretation prevails and the mother is denied recovery for the death of her illegitimate child. In *Galveston, H. & S. A. Ry. Co.* v. *Walker,* 48 Tex. Civ. App. 52, two illegitimate children recovered for the death of their mother, but the court seems to rely somewhat on a statute abolishing the rule that statutes in derogation of the common law are to be strictly construed. In *Muhl's Adm'rs* v. *Mich. South. Ry. Co.,* 10 Ohio St. 272, the court clearly indicates that illegitimacy should not bar plaintiff's recovery, but such construction was not absolutely necessary to the disposal of the case. There is considerable solid authority, however, for the doctrine that under such statute the mother can recover for the death of her illegitimate child. *Security Title & Trust Co* v. *West Chicago St. Ry. Co.,* 91 Ill. App. 332; *Marshall* v. *Wabash Ry. Co.,* 120 Mo. 275. The statement of the court to the contrary when this last case was before the Federal court, 46 Fed. 269, is pure *dictum.* In *Kenney* v. *Seaboard*